

Message

From: Wells, Kimberly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=WELLS, KIMBERLY]
Sent: 8/2/2018 10:02:37 PM
To: Joyce W.Y. Tam-Sugiyama [jtam@carlsmith.com]; Shareem, Jelani [SHAREEM.JELANI@EPA.GOV]; Lieben, Ivan [Lieben.Ivan@epa.gov]
CC: Ian L. Sandison [isandison@carlsmith.com]; Sheryl Nicholson (shnichol@ksbe.edu) [shnichol@ksbe.edu]; Nicole Altman (nialtman@ksbe.edu) [nialtman@ksbe.edu]
Subject: RE: KS LCC: Revised Draft CA/FO
Attachments: KS Draft Consent Agreement 8.2.18.docx

All,

Here is a draft we can work from during our call today. I accepted most of the changes you suggested and made a couple changes, which are tracked. I am hoping to finalize the changes during our call today so that the CA/FO will be ready for KS to sign.

Kimby

Kimberly Wells
Attorney Advisor
Office of Regional Counsel
U.S. EPA Region 9
75 Hawthorne Street, 12th Floor
San Francisco, CA 94105
(415) 972-3056

This email, including attachments, may contain information that is confidential and/or protected by the Attorney-Client or other privileges.

From: Joyce W.Y. Tam-Sugiyama [mailto:jtam@carlsmith.com]
Sent: Tuesday, July 31, 2018 1:13 PM
To: Wells, Kimberly <wells.kimberly@epa.gov>; Shareem, Jelani <Shareem.Jelani@epa.gov>; Lieben, Ivan <Lieben.Ivan@epa.gov>
Cc: Ian L. Sandison <isandison@carlsmith.com>; Sheryl Nicholson (shnichol@ksbe.edu) <shnichol@ksbe.edu>; Nicole Altman (nialtman@ksbe.edu) <nialtman@ksbe.edu>
Subject: RE: KS LCC: Revised Draft CA/FO

Hi all,

Please see attached for our edits and comments to the CAFO for discussion on our call on Thursday. The draft is subject to review and approval by KS management.

Thanks,
Joyce

JOYCE W.Y. TAM-SUGIYAMA
Partner | Carlsmith Ball LLP

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From: Wells, Kimberly [<mailto:wells.kimberly@epa.gov>]
Sent: Tuesday, July 31, 2018 6:57 AM
To: Lieben, Ivan; Ian L. Sandison; Sheryl Nicholson (shnichol@ksbe.edu); Nicole Altman (nialtman@ksbe.edu); Joyce W.Y. Tam-Sugiyama
Cc: Shareem, Jelani
Subject: RE: KS LCC: Revised Draft CA/FO

Thanks Ivan,

Ian, Sheryl, Joyce, and Nicole – please remember to send us your comments so that we can review them before our call on Thursday.

Kimby

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This email, including attachments, may contain information that is confidential and/or protected by the Attorney-Client or other privileges.

From: Lieben, Ivan
Sent: Monday, July 23, 2018 1:02 PM
To: Wells, Kimberly <wells.kimberly@epa.gov>; Ian L. Sandison <isandison@carlsmith.com>; Sheryl Nicholson (shnichol@ksbe.edu) <shnichol@ksbe.edu>; Nicole Altman (nialtman@ksbe.edu) <nialtman@ksbe.edu>; Joyce W.Y. Tam-Sugiyama <jtam@carlsmith.com>
Cc: Shareem, Jelani <Shareem.Jelani@epa.gov>
Subject: RE: KS LCC: Revised Draft CA/FO

SETTLEMENT CONFIDENTIAL

Dear all,

Please find attached a slightly revised draft CA/FO that includes certain minor updates (redlined to the last version we forwarded) to make it consistent with past CA/FOs and our FOIA regulations. Briefly, the updates are the following:

Par. 46.a.iv – In regard to the CBI language, we cannot commit to “treating” the info as CBI until we have undertaken the CBI process and made a final determination. However, we can protect the information until then. The modified provisions reflects this.

Par. 46.a.v – Consistent with our past settlements and practice, KS should retain all information until at least 3 years after the violations have been resolved by a formal settlement.

Par. 49 – This provision now clarifies that for each LCC closure, the final report should include a brief description of the work and, at a minimum, the final receipt from the contractor in addition to HDOH and other government approvals. We modified the CBI protection language in Paragraph 46.a.iv to cover these submittals, as we understand that this was a concern of KS’s.

BTW, as Ms. Wells is out this week, I am forwarding these revisions on her behalf to keep the process moving. Again, thank you for your ongoing cooperation in putting together this important and environmentally beneficial settlement. Of course, no term is final until EPA upper management has approved and signed the CA/FO.

Best regards,

Ivan Lieben,
General Law and Cross-Cutting Issues Section
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This email, including attachments, may contain information that is confidential and/or protected by the attorney/client or other privileges.

From: Wells, Kimberly

Sent: Thursday, July 19, 2018 3:13 PM

To: Ian L. Sandison <isandison@carlsmith.com>; Sheryl Nicholson (shnichol@ksbe.edu) <shnichol@ksbe.edu>; Nicole Altman (nialtman@ksbe.edu) <nialtman@ksbe.edu>; Joyce W.Y. Tam-Sugiyama <jtam@carlsmith.com>

Cc: Shareem, Jelani <Shareem.Jelani@epa.gov>; Lieben, Ivan <Lieben.Ivan@epa.gov>

Subject: KS LCC: Revised Draft CA/FO

Hi Ian, Sheryl, Joyce, and Nicole,

I think we are getting very close on the CA/FO!

To follow up on our call yesterday:

1. I have attached the new draft of the consent agreement. If you have comments or suggestions, please make them in the word document. The changes will be tracked which will make it easier to incorporate them when you send the document back to us. I also have to apologize because I prepared a tracked changes version of this draft, as you requested but then I accidentally saved over it. So I don’t have the tracked changes, but I used the “compare” function to highlight the differences between this draft and the last draft. The comparison PDF shows where I made changes, but please work from the Word document.
2. I referred back to our Audit Policy and found that it uses the term “audit” to refer to “discovery, disclosure, correction and prevention of violations.” For consistency, we should use the term “audit” in the consent agreement to include not just the targeting and inspections, but also the closure of LCCs. I have tried to update our terminology accordingly.
3. As you requested, I looked into the background of the blanket LCC ban at 40 C.F.R. 144.88. It appears that EPA used to regulate LCCs based on location and proximity to sources of drinking water. But public comment on a

proposed rulemaking and a lawsuit from the Sierra Club caused EPA to study the issue more closely in the 1990s. EPA found that groundwater was being contaminated by Class V injection wells and determined that the rule's coverage should be expanded to apply nationwide, not just in areas with delineated as groundwater sources of drinking water. This is documented in the Federal Register notice for the regulations: 64 Fed. Reg. 68,546, 68,553 (December 7, 1999).

4. Finally, please send Jelani Nicole's contact information so that our Office of Public Affairs can coordinate with her. We would not do a press release until the final order is entered, which will likely be September. However, our Office of Public Affairs would like to begin coordinating so they are prepared when it is time to do a press release.

Let's schedule the next call for August 1 or 2. Please contact Jelani about scheduling the next call. I will be out next week but Jelani has access to my calendar and can find a time that works for all of us. Please send us any comments by July 30 so we can review before the call.

Thank you,

Kimby

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